



General Assembly

File No. 395

February Session, 2012

House Bill No. 5440

House of Representatives, April 12, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS AND OTHER PERSONS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- Section 1. Section 46b-59 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2012*):
- 3 [The Superior Court may grant the right of visitation with respect to
- 4 any minor child or children to any person, upon an application of such
- 5 person. Such order shall be according to the court's best judgment
- 6 upon the facts of the case and subject to such conditions and
- 7 limitations as it deems equitable, provided the grant of such visitation
- 8 rights shall not be contingent upon any order of financial support by
- 9 the court. In making, modifying or terminating such an order, the
- 10 court shall be guided by the best interest of the child, giving
- 11 consideration to the wishes of such child if he is of sufficient age and
- 12 capable of forming an intelligent opinion.]
- 13 (a) As used in this section:

14 (1) "Grandparent" means a grandparent or great-grandparent 15 related to a minor child by (A) blood, (B) marriage, or (C) adoption of

- the minor child by a child of the grandparent; and
- 17 (2) "Real and significant harm" means that the minor child is
- 18 neglected, as defined in section 46b-120, or uncared for, as defined in
- 19 said section.
- 20 (b) Any person may submit a verified petition to the Superior Court
- 21 for the right of visitation with any minor child. Such petition shall
- 22 include specific and good-faith allegations that (1) a parent-like
- 23 relationship exists between the person and the minor child, and (2)
- 24 <u>denial of visitation would cause real and significant harm. Subject to</u>
- 25 <u>subsection (e) of this section, the court shall grant the right of visitation</u>
- 26 with any minor child to any person if the court finds after hearing and
- 27 by clear and convincing evidence that a parent-like relationship exists
- 28 between the person and the minor child and denial of visitation would
- 29 <u>cause real and significant harm.</u>
- 30 (c) In determining whether a parent-like relationship exists between
- 31 the person and the minor child, the Superior Court may consider, but
- 32 <u>shall not be limited to, the following factors:</u>
- 33 (1) The existence and length of a relationship between the person
- 34 and the minor child prior to the submission of a petition pursuant to
- 35 this section;
- 36 (2) The length of time that the relationship between the person and
- 37 <u>the minor child has been disrupted;</u>
- 38 (3) The specific parent-like activities of the person seeking visitation
- 39 toward the minor child;
- 40 (4) Any evidence that the person seeking visitation has
- 41 unreasonably undermined the authority and discretion of the custodial
- 42 parent;
- 43 (5) The significant absence of a parent from the life of a minor child;

- 44 (6) The death of one of the minor child's parents;
- 45 (7) The physical separation of the parents of the minor child;
- 46 (8) The fitness of the person seeking visitation; and
- 47 (9) The fitness of the custodial parent.
- 48 (d) In determining whether a parent-like relationship exists between
- 49 <u>a grandparent seeking visitation pursuant to this section and a minor</u>
- 50 child, the Superior Court may consider, in addition to the factors
- 51 enumerated in subsection (c) of this section, the history of regular
- 52 contact and proof of a close and substantial relationship between the
- 53 grandparent and the minor child.
- 54 (e) If the Superior Court grants the right of visitation pursuant to 55 subsection (c) of this section, the court shall set forth the terms and conditions of visitation including, but not limited to, the schedule of 56 57 visitation, including the dates or days, time and place or places in 58 which the visitation can occur, whether overnight visitation will be 59 allowed and any other terms and conditions that the court determines 60 are in the best interest of the minor child, provided such conditions shall not be contingent upon any order of financial support by the 61 62 court. In determining the best interest of the minor child, the court 63 shall consider the wishes of the minor child if such minor child is of sufficient age and capable of forming an intelligent opinion. In 64 determining the terms and conditions of visitation, the court may 65 consider (1) the effect that such visitation will have on the relationship 66 67 between the parents or guardians of the minor child and the minor child, and (2) the effect on the minor child of any domestic violence 68 that has occurred between or among parents, grandparents, persons 69 70 seeking visitation and the minor child.
 - (f) Visitation rights granted in accordance with this section shall not be deemed to have created parental rights in the person or persons to whom such visitation rights are granted, nor shall such visitation rights be a ground for preventing the relocation of the custodial

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<u>parent</u>. The grant of such visitation rights shall not prevent any court of competent jurisdiction from thereafter acting upon the custody of such child, the parental rights with respect to such child or the adoption of such child and any such court may include in its decree an order terminating such visitation rights.

(g) Upon motion, the court may order the payment of fees for another party, the attorney for the minor child, the guardian ad litem, or any expert by any party in accordance with such party's financial ability.

This act shal sections:	l take effect as follo	ws and shall amend the followin	
sections.			
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Section 1	October 1, 2012	46b-59	

AGE Joint Favorable C/R JUD

JUD Joint Favorable

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The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill makes changes regarding petitions for third party visitation rights and does not result in a fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis HB 5440

AN ACT CONCERNING VISITATION RIGHTS FOR GRANDPARENTS AND OTHER PERSONS.

SUMMARY:

Current law allows grandparents and other third parties to petition for the right to visit a minor; and the court may grant the request, subject to conditions and limitations it deems equitable. This bill instead requires a petitioner to include in his or her request, specific and good-faith allegations that (1) a parent-like relationship with the minor exists and (2) the minor will suffer real and substantial harm if the visitation is denied. (This means a degree of harm analogous to a claim that the minor is neglected or uncared-for as defined under state child abuse statutes.) Unlike most petitions, the petitioner must swear that its allegations are true ("verify").

The court must hold a hearing and grant the request if it finds, by clear and convincing evidence, that these conditions have been met. Establishing the "clear and convincing evidence" standard complies with the standard stated in a recent Connecticut Supreme Court decision (see BACKGROUND).

The bill also:

- 1. establishes factors the court may consider when determining whether a parent-like relationship exists between the petitioner and the minor;
- 2. specifies visitation terms and conditions the court may set;
- 3. specifies that any visitation rights granted to a third party do not prevent a custodial parent from relocating; and

4. allows the court to order one party to pay the other's fees, including those charged by the minor's attorney, guardian ad litem, or expert based on the individual's ability to pay.

EFFECTIVE DATE: October 1, 2012

PARENT-LIKE RELATIONSHIP DETERMINATIONS

Under the bill, when determining the existence of a parent-like relationship between the petitioner and minor, the court may consider:

- 1. the existence and length of the person's and minor's relationship before the court petition was filed,
- 2. the length of time that relationship has been disrupted,
- 3. the specific parent-like activities of the petitioner toward the minor,
- 4. any evidence that the petitioner has unreasonably undermined the custodial parent's authority and discretion,
- 5. the significant absence of a parent from the minor's life,
- 6. the death or physical separation of the minor's parents, and
- 7. the fitness of the petitioner and the custodial parent.

If the petitioner is a grandparent, the court may also consider the history of regular contact and proof of a substantial relationship between the grandparent and minor. The bill defines "grandparent" as a grandparent or great-grandparent related to a minor child by blood, marriage, or adoption.

VISITATION

By law, the court may set the terms and conditions of any visitation it grants, provided they are not contingent on any court order of financial support. The bill specifies that such terms and conditions may include (1) the dates, days, time, and location; (2) whether overnight visits are allowed; and (3) any other conditions it determines are in the

minor's best interest. The law requires the court to consider the minor's wishes if he or she is old enough and capable of forming an intelligent opinion.

When determining the visitation terms and conditions, the bill allows the court to consider the effect of (1) the visitation on the minor's relationship with his or her parents or guardians and (2) any domestic violence that has occurred between or among parents, grandparents, petitioners, and the minor.

BACKGROUND

State Supreme Court Case on Visitation

In *Roth v. Weston*, a maternal grandmother and aunt petitioned under CGS § 46b-59 for visitation with children whose father had terminated it after the children's mother committed suicide (*Roth v. Weston*, 259 Conn. 202 (2002)). The relatives claimed that visitation was in the children's best interest, although they did not contend that the father was not a fit parent. In his response, the father presented reasons why he believed visitation was not in the children's best interest.

The trial court granted the petition. But the Connecticut Supreme Court reversed, it ruling that CGS § 46b-59 would be unconstitutional unless it required any third party, including a grandparent or a great-grandparent, seeking visitation to make specific and good-faith allegations that (1) a parent-like relationship exists between the child and the person seeking visitation and (2) denial of the visitation will cause real and significant harm to the child as defined under Connecticut's child abuse statutes.

Once these high jurisdictional hurdles are overcome, the petitioner must prove the allegations by clear and convincing evidence. Only if that enhanced burden of persuasion has been met may the court enter an order of visitation.

COMMITTEE ACTION

Aging Committee

Joint Favorable Change of Reference

Yea 12 Nay 0 (03/15/2012)

Judiciary Committee

Joint Favorable

Yea 45 Nay 0 (03/28/2012)